



STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF REAL ESTATE

RESIDENTIAL MORTGAGE ADMINISTRATIVE RULES

October 2006

**RESIDENTIAL MORTGAGE ADMINISTRATIVE RULES
DIVISION OF REAL ESTATE
UTAH DEPARTMENT OF COMMERCE**

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R162. Commerce, Real Estate.

R162-201. Residential Mortgage Definitions.

201.1 Control. As used in Section 61-2c-102(1) of the Utah Residential Mortgage Practices Act, "control" is defined as the power to directly or indirectly: 11/03/04

- (a) direct or exercise a controlling influence over:
 - (i) the management or policies of an entity;
 - (ii) the election of a majority of the directors, officers, managers, or managing partners of an entity;
- (b) vote 20% or more of any class of voting securities of an entity by an individual; or
- (c) vote more than 5% of any class of voting securities of an entity by another entity.

06/29/04

201.2 Certification. "Certification" means that the holder of a certificate is authorized by the Division to:

- (a) establish and operate a school that provides courses for prelicensing requirements;
- (b) provide courses that are approved for continuing education; or
- (c) function as an instructor for courses approved for prelicensing requirements or for continuing education.

11/03/04

R162-202. Initial Application.

R162-202-1. Licensing Examination.

202.1 Except as provided in Subsection 202-8, effective January 1, 2004, an individual applying for an initial license is required to have passed the licensing examination approved by the commission before making application to the division for a license. 08/03/05

202.1.1 All examination results are valid for 90 days after the date of the examination. If the applicant does not submit an application for licensure within 90 days after successful completion of the examination, the examination results shall lapse and the applicant shall be required to retake and successfully pass the examination again in order to apply for a license.

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R162-202-2. Form of Application.

202.2 All applications must be made in the form required by the division and shall include the following information: 11/03/04

- 202.2.1 Any name under which the individual will transact business in this state; 02/03/04
- 202.2.2 The address of the principal business location of the applicant; 02/03/04
- 202.2.3 The home street address and home telephone number of any individual applicant or control person of an entity applicant; 02/03/04
- 202.2.4 A mailing address for the applicant; 02/03/04
- 202.2.5 The date of birth and social security number of any individual applicant or control person of an entity applicant; 02/03/04
- 202.2.6 Answers to a "Licensing Questionnaire" supplying information about present or past mortgage licensure in other jurisdictions, past license sanctions or surrenders, pending disciplinary actions, pending investigations, past criminal convictions or pleas, and/or civil judgments based on fraud, misrepresentation, or deceit; 02/03/04
- 202.2.7 A "Letter of Waiver" authorizing the division to obtain the fingerprints of the applicant or control person, review past and present employment and education records, and to conduct a criminal history background check; 02/03/04
- 202.2.8 If an individual applicant or a control person of an entity applicant has been convicted of any felonies or misdemeanors involving moral turpitude within the ten years preceding application, the charging document, the judgment and sentencing document, and the case docket on each such conviction must be provided with the application; and 02/03/04
- 202.2.9 If an individual or entity applicant or a control person of an entity applicant has had a license or registration suspended, revoked, surrendered, canceled or denied in the five years preceding application based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the documents stating the sanction taken against the license or registration and the reasons therefore must be provided with the application. 02/03/04
- 202.2.10 On or after January 1, 2005, applicants for a mortgage officer license shall submit proof in the form required by the Division of successful completion of the 20 hours of approved prelicensing education required by Section 61-2c-202(4)(a)(i)(C) taken within one year prior to application; or 11/03/04
- 202.2.11 On or after September 1, 2005, applicants for a principal lender license shall submit proof in the form required by the Division of successful completion of the 40 hours of approved prelicensing education required by Section 61-2c-206(1)(c) taken within one year prior to application. 11/03/04

R162-202-3. Incomplete Application.

202.3 If an applicant for a license makes a good faith attempt to submit a completed application within 90 days after passing the examination, but the application is incomplete, the Division may grant an extension of the validity of the examination results for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application. Following the extension period, the application will be denied as incomplete if the applicant has not supplied the missing documents or information. 11/03/04

R162-202-4. Nonrefundable Fees.

202.4 All fees required in conjunction with an application for a license are nonrefundable and will not be refunded if the applicant fails to complete an application or if a completed application is denied for failure to meet the licensing criteria. 11/03/04

R162-202-5. Determining Fitness for Licensure.

202.5.1 Good Moral Character. The Commission and the Division will consider information necessary to determine whether an applicant for a license or the control person of an entity that has applied for a license meets the requirement of good moral character, which may include the following in addition to whether the individual has been convicted of a felony or misdemeanor involving moral turpitude in the ten years preceding the application:

- (a) The circumstances that led to any criminal convictions considered by the Commission and the Division;
- (b) The amount of time that has passed since the individual's last criminal conviction;
- (c) Any character testimony presented at the hearing and any character references submitted by the individual;
- (d) Past acts related to honesty or moral character involving the business of residential mortgage loans;
- (e) Whether the individual has been guilty of dishonest conduct in the five years preceding the application that would have been grounds under Utah law for revocation or suspension of a registration or license had the individual then been registered or licensed;
- (f) Whether a civil judgment based on fraud, misrepresentation, or deceit has been entered against the individual, or whether a finding of fraud, misrepresentation or deceit by the individual has been made in a civil suit, regardless of whether related to the residential mortgage loan business, and whether any money judgment has been fully satisfied;
- (g) Whether fines and restitution ordered by a court in a criminal proceeding have been fully satisfied, and whether the individual has complied with court orders in the criminal

proceeding;

(h) Whether a probation agreement, plea in abeyance, or diversion agreement entered into in a criminal proceeding in the ten years preceding the application has been successfully completed;

(i) Whether any tax and child support arrearages have been paid; and

(j) Whether there has been good conduct on the part of the individual subsequent to the individual's offenses.

11/03/04

202.5.2 Competency to Transact the Business of Residential Mortgage Loans. The Commission and the Division will consider information necessary to determine whether an applicant for a license or the control person of an entity that has applied for a license meets the requirement of competency to transact the business of residential mortgage loans, which shall include the following:

(a) Past acts related to competency to transact the business of residential mortgage loans;

(b) Whether a civil judgment involving the business of mortgage loans has been entered against the individual, and whether the judgment has been fully satisfied, unless the judgment has been discharged in bankruptcy;

(c) The failure of any previous mortgage loan business in which the individual engaged, and the reasons for any failure;

(d) The individual's management and employment practices in any previous mortgage loan business, including whether or not employees were paid the amounts owed to them;

(e) The individual's training and education in mortgage lending, if any was available to the applicant;

(f) The individual's training, education, and experience in the mortgage loan business or in management of a mortgage loan business, if any was available to the individual;

(g) A lack of knowledge of the Utah Residential Mortgage Practices Act on the part of the individual;

(h) A history of disregard for licensing laws;

(i) A prior history of drug or alcohol dependency within the last five years, and any subsequent period of sobriety; and

(j) Whether the individual has demonstrated competency in business subsequent to any past incompetence by the individual in the mortgage loan business. 02/03/04

202.5.3 Age. All applicants shall be at least 18 years old. 06/29/04

R162-202-6. Conversion of Existing Registrations.

202.6 In order to comply with Section 61-2c-201(1), the division shall convert all existing registrations to licenses on January 1, 2004. The licenses issued to individuals under the authority of this rule shall be issued subject to Section 61-2c-202(4)(a)(ii). 11/03/04

R162-202-7. Registration of Assumed Business Name.

202.7.1 An individual or entity licensed to engage in the business of residential mortgage loans who intends to conduct business under an assumed business name instead of the individual's own name shall register the assumed business name with the Division. 08/03/05

202.7.2 To register an assumed business name, the applicant shall pay the applicable non-refundable fee and submit proof in the form required by the Division of a current filing of that assumed business name with the Division of Corporations and Commercial Code. 08/03/05

202.7.3 Misleading or deceptive business names. The Division shall not register an assumed business name if there is a substantial likelihood that the public will be misled by the name into thinking that they are not dealing with an individual or entity engaged in the residential mortgage loan business. 08/03/05

R162-202-8. Reciprocal Licenses.

202.8.1 An applicant who is a legal resident of a state with which the Division has entered into a written reciprocity agreement and who applies for a Utah license shall submit to the Division:

- (a) An application for a reciprocal license on the form required by the Division;
- (b) All applicable licensing fees and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;
- (c) An official license history from the licensing agency in the applicant's state of legal residence containing the dates of the applicant's licensure and any complaint or disciplinary history; and
- (d) The information required by Subsections 202.2.1 through 202.2.9. 08/03/05

202.8.2 An applicant who is a legal resident of a state with which the Division has not entered into a written reciprocity agreement and who applies for a Utah license shall submit to the Division:

- (a) An application for a reciprocal license on the form required by the Division;
- (b) All applicable licensing fees and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;
- (c) A signed, notarized affidavit attesting that the applicant has at least five years experience in the business of residential mortgage loans;
- (d) An official license history from the licensing agency in the applicant's state of legal residence, and any other state(s) in which the experience referred to in Subsection 202.8.2(c) was obtained, that includes the dates of the applicant's licensure and any complaint or disciplinary history; and
- (e) A copy of the licensing statute or rules from any jurisdiction in which residential mortgage experience is claimed that demonstrate that the jurisdiction's licensing requirements are substantially equivalent to those of Utah; and
- (f) Those items required by Subsections 202.2.1 through 202.2.9. 08/03/05

R162-202-9. Branch Office.

202.9 A branch office shall be registered with the Division prior to operation. To register the branch office, the control person of the entity must submit to the Division, on the forms required by the Division, the location of the branch office and the names of all licensees assigned to the branch, along with the fee for registering the branch office. 11/03/04

R162-202-10 Principal Lending Manager Experience Requirement.

202.10 Equivalent Experience. Experience in originating loans or directly supervising individuals who originate loans shall be considered to be "equivalent experience" for the purpose of Section 61-2c-206(1)(e). 04/05/06

R162-203. Changes to Residential Mortgage Licensure Statement.

R162-203-1. Status Changes.

203.1. A licensee shall notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and non-refundable fees are received by the Division. Notice must be on the forms required by the Division. 11/03/2004

203.1.1 Change in Entity. If a change in a licensed entity results in the creation of a new legal entity, the new entity may not operate under the license issued to the previous entity. If the change of partners in a partnership, either by the addition or withdrawal of partners, creates a new legal entity, the new entity may not operate under the license issued by the Division to the previous partnership. The dissolution of a corporation, partnership, limited

liability company, association, or other entity that holds a license issued by the Division terminates that license. 11/03/2004

203.1.1.1 Notification of Change in Entity. The control person of a licensed entity shall provide written notification to the Division of any change in the entity that will create a new legal entity or that will cause the dissolution of the entity prior to the effective date of the change. 11/03/04

203.1.2. Change of name requires submission of official documentations such as a marriage certificate, divorce decree, or driver's license. 11/03/04

203.1.3. Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address. 11/03/04

203.1.4. Change of name of a licensed entity shall be accompanied by evidence that the new name has been approved by the Division of Corporations and Commercial Code, Department of Commerce. 11/03/04

203.1.5. Change of control person of a licensed entity requires notice from the entity in the form required by the Division, signed by both the terminating control person and the new control person, and the applicable change fee. 11/03/04

R162-203-2. Entity Affiliation.

An individual licensed under the Utah Residential Mortgage Practices Act shall notify the Division on the form required by the Division of the entity for which that individual shall conduct residential mortgage lending before acting on behalf of that entity. 11/03/04

203.2.1. Transfers. Prior to transferring from one entity to another, or from one branch office to another, the licensee must mail, deliver, or electronically transmit to the Division written notice of the transfer on the form required by the Division. 11/03/04

R162-203-3. Unavailability of Licensee.

203.3.1 Mortgage Officers. If a mortgage officer is not available to properly execute the form required to terminate the license affiliation of the mortgage officer with a licensed entity, the control person of the entity may still terminate the mortgage officer's license affiliation with the entity, provided a letter advising the mortgage officer of the termination is mailed by the control person of the entity by certified mail to the last known address of the mortgage officer. A verified copy of the letter and proof of mailing by certified mail shall be attached to form required to terminate the mortgage officer's license affiliation with the entity when the form is submitted to the Division. 11/03/04

203.3.2 Control Person. If control person who will no longer be the control person designated by the entity is not available to properly execute the form that is required by the Division to substitute one control person for the other, the change in control person may still be made by the entity, provided a letter advising of the change is signed by a person who is legally authorized to make staffing decisions on behalf of the entity and mailed by certified mail to the last known address of the unavailable person. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form required by the Division to substitute one control person for another when the form is submitted to the Division.

11/03/04

R162-203-4. Inactivation.

203.4 To voluntarily inactivate a license, the licensee shall deliver, mail, or electronically transmit to the Division a written request for license inactivation on the form required by the Division, which form shall have been signed by both the licensee and the licensee's control person.

11/03/04

203.4.1 The control person of the entity with which a mortgage officer is licensed may terminate the mortgage officer's license affiliation with the entity without the mortgage officer's consent, known as an "involuntarily inactivation" of the mortgage officer's license by complying with R162-203.3.1.

11/03/04

R162-203-5. Activation.

203.5 All licensees changing to active status must submit to the Division;

03/09/06

(a) the applicable non-refundable activation fee;

03/09/06

(b) a written request for activation on the form required by the Division; and

03/09/06

(c) if the licensee was on inactive status at the time of the most recent renewal, proof of successful completion of the number of hours of continuing education that would have been required to renew had the licensee been on active status at the time do the licensee's most recent renewal. To qualify as continuing education for activation, all continuing education hours submitted must have been completed with twenty-four months prior to applying to activate.

03/09/06

R162-204. Residential Mortgage Record Keeping Requirements.

R162-204-1. Residential Mortgage Record Keeping Requirements.

204.1.1 Entity Requirements. An entity licensed under the Utah Residential Mortgage Practices Act must maintain for the period set forth in Utah Code Section 61-2c-302 the following records:

04/05/06

(a) Application forms;

- (b) Disclosure forms;
- (c) Truth-in-Lending forms;
- (d) Credit reports and the explanations therefor;
- (e) Conversation logs;
- (f) Verifications of employment, paycheck stubs, and tax returns;
- (g) Proof of legal residency, if applicable;
- (h) Appraisals, appraisal addenda, and records of communications between the appraiser and the registrant or lender;
- (i) Underwriter denials;
- (j) Loan approval; and
- (k) All other records required by underwriters involved with the transaction. 10/01/02

204.1.2 Principal Lending Manager Requirements. The principal lending manager of an entity shall be responsible to make the records set forth in Section 204.1.1 available to the Division as provided in Section 61-2c-302(3) 04/05/06

R162-205. Residential Mortgage Unprofessional Conduct.

R162-205-1. Residential Mortgage Unprofessional Conduct.

Unprofessional conduct includes the following acts: 10/01/02

- (a) conducting the business of residential mortgage lending under any name other than a name under which the entity or individual conducting such business is licensed with the Division; 04/12/04
- (b) failing to remit to the appropriate third parties appraisal fees, inspection fees, credit reporting fees, insurance premiums, or similar fees which have been collected from a borrower; 10/07/04
- (c) charging for services not actually performed; 10/07/04
- (d) charging a borrower more for third party services than the actual cost of those services; 10/07/04
- (e) filling out or altering any Real Estate Purchase Contract or other contract for the sale of real property, or any addenda thereto; and 10/07/04
- (f) making any alteration to any appraisal of real property; and 10/07/04

(g) in the case of a principal lending manager, failing to exercise reasonable supervision over the activities of any unlicensed staff of the entity; and 10/11/06

(h) unless acting as a real estate licensee and not as a mortgage licensee: 10/11/06

(i) providing a buyer or seller of real estate with comparative market analysis or otherwise assisting a buyer or seller to determine the offering price or sales price of real estate; 10/11/06

(ii) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate, except that a mortgage licensee may advise a borrower about the consequences that the terms of a purchase agreement may have on the terms and availability of various mortgage products; 10/11/06

(iii) performing any other acts that require a real estate license under Title 61, Chapter 2; 10/11/06

(iv) advertising the sale of real estate by use of any advertising medium, except that a mortgage licensee may: 10/11/06

(1) advertise real estate owned by the licensee as a "for sale by owner"; 10/11/06

(2) provide advertising to a property owner who has not signed an agency agreement with a real estate licensee and is selling the real estate "for sale by owner", so long as the advertising provides clear and distinguishable identification, contact information, function and responsibility of both the property owner and the mortgage licensee; or 10/11/06

(3) advertise in conjunction with a real estate brokerage, so long as the advertising provides clear and distinguishable identification, contact information, function and responsibility of both the real estate licensee and the mortgage licensee. 10/11/06

R162-206. Licensing Examination.

R162-206-1. Licensing Examination.

206.1 In order to register for the licensing examination, the applicant shall deliver an application to take the examination, together with the applicable examination fee to the testing service designated by the division. If the applicant registers for the examination but fails to take a scheduled examination, the examination fee will be forfeited unless the applicant has complied with the Change/Cancel Policy in the candidate handbook furnished to the applicant by the examination provider. 02/03/04

206.2 The licensing examination will be a multiple choice examination and will consist of a national portion and a Utah-specific portion. Both portions of the examination must be passed within a six-month period of time. 02/03/04

R162-207. License Renewal.

R162-207-1. License Renewal.

207.1 Renewal period. Registrations and licenses issued under the Utah Residential Mortgage Practices Act are valid for a period of two years. 02/03/04

207.1.1 Notwithstanding Section 207.1, an individual license shall be inactivated by the division on January 1, 2005 if the holder of that license has not by that date submitted proof to the division of having passed the examination required by Section 61-2c-202(4)(a)(i)(C). The holder of a license that has been inactivated under this section may not engage in the business of residential mortgage loans for which licensure under this chapter is required until the individual has provided to the division any forms required by the division to activate the license, along with proof of having passed the examination required by Section 61-2c-202(4)(a)(i)(C). 02/03/04

R162-207-2. Renewal of Converted Licenses.

207.2 If an individual whose existing registration was converted by the division to a license pursuant to R162-202.6 applies to renew after January 1, 2004, but before January 1, 2005, the division shall renew the license without requiring proof that the individual has passed the examination required by Section 61-2c-202(4)(a)(i)(C). The renewed license issued under the authority of this section shall be issued subject to Section 61-2c-202(4)(a)(ii). 11/03/04

R162-207-3. Renewal Process.

207.3.1 Renewal Notice. A license renewal notice shall be sent by the Division to the licensee at the mailing address shown on Division records. The renewal notice shall specify the requirements for renewal and shall require that the licensee document or certify that the requirements have been met. The licensee must apply to renew and pay all applicable fees on or before the expiration date shown on the notice. 11/03/04

207.3.2 Application for Renewal. All applications for renewal must be made in the form required by the division and shall include the following:

- (a) A licensure statement in the form required by the division;
- (b) The renewal fee and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;
- (c) If the applicant is an individual, proof using forms approved by the division of having completed during the two years prior to application the continuing education required by the commission under Section 61-2c-104;
- (d) The current home street address and home telephone number of any individual applicant or control person of an entity applicant;

(e) A current mailing address for the applicant;

(f) Answers to a "Licensing Questionnaire" supplying information about events that occurred in the preceding two years related to mortgage licensure in other jurisdictions, license sanctions or surrenders, pending disciplinary actions, pending investigations, criminal convictions or pleas, and/or civil judgments or findings based on fraud, misrepresentation, or deceit;

(g) If, at the time of application for renewal, an individual applicant or a control person of an entity applicant is charged with, or since the last renewal has been convicted of or entered a plea to, any felony or misdemeanor, the following information must be provided on each conviction, plea, or charge: the charging document, the case docket, and the judgment and sentencing document, if applicable; and

(h) If, in the two years preceding application for renewal, an individual or entity applicant or a control person of an entity applicant has had a license or registration suspended, revoked, surrendered, canceled or denied based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the applicant must provide the documents stating the sanction taken against the license or registration and the reasons therefore.

11/03/04

207.3.3 Continuing Education Requirement. All active licensees are required to have completed their continuing education requirement prior to applying to renew. *03/09/06*

207.3.3.1 Documentation of Continuing Education. Any licensee who renews online and certifies that the required continuing education has been completed shall maintain the original course completion certificates supporting that certification for two years following renewal. The licensee shall produce those certificates for audit upon request by the Division.

11/03/04

207.3.3.2 Out of State Courses. Continuing education credit will be given for a course taken in another state provided the course has been certified for continuing education purposes by the licensing agency in the other state and the subject matter of the course relates to protection of the public, but not to state-specific licensing laws. Evidence must be retained by the licensee, and provided to the Division upon request, that the course was certified by the other state at the time the course was taken.

11/03/04

207.3.3.3 Continuing Education Requirement upon activation of license. As a condition for the activation of the inactive license that was on inactive status at the time of the licensee's most recent renewal, the licensee shall supply the Division with proof of successful completion of the number of hours of continuing education that would have been required to renew had the license been on active status at the time of the licensee's most recent renewal. To qualify as continuing education for activation all continuing education

hours submitted must have been completed within twenty-four months prior to applying to activate. 03/09/06

207.3.4 Late Renewal. If all required renewal forms, fees, and documentation have not been received or postmarked by the expiration date of the license, the license shall expire. When an active license expires, an individual licensee's affiliation with a licensed entity automatically terminates. 11/03/04

207.3.4.1 A licensee may apply to renew an expired license within thirty days after the expiration date of the license by completing all of the renewal requirements, including continuing education requirements, and paying a non-refundable late fee. 03/09/06

207.3.4.2 After the thirty day period, and until six months after the expiration date of the license, a licensee may apply to reinstate a license by completing all of the renewal requirements, including the continuing education requirements, paying a non-refundable late fee, and providing proof of successful completion of 12 hours of continuing education in addition to that required for a timely renewal on active status. 03/06/09

R162-207-4. Current Entity Name Registration.

207.4 An entity submitting an application for renewal must at the time of application have a name registration with the Utah Division of Corporations that is current and in good standing. The division will not process an application for renewal unless it can verify that the applicant's name registration is current and in good standing. 02/03/04

R162-207-5. Incomplete Application.

207.5 If an applicant makes a good faith attempt to submit a completed application for renewal prior to the expiration date of the applicant's current registration or license, but the application is incomplete, the Division may grant an extension for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application. 02/03/04

R162-207-6. Nonrefundable Fees.

207.6 All fees required in conjunction with an application for renewal are nonrefundable and will not be refunded if the applicant fails to complete an application or if a completed application is denied for failure to meet the renewal criteria. 02/03/04

R162-207-7. Determining Fitness for Renewal.

207.7 The commission and the division shall determine fitness for renewal in accordance with Section 202.5 above. 02/03/04

R162-207-8. Applications Filed by Mail.

207.8 The Division will consider a properly completed application for renewal that has been postmarked on or before the expiration date shown on the renewal notice to have been timely filed.

11/03/04

R162-207-9. Misrepresentation on an Application.

207.9 Any misrepresentation in an application for renewal, regardless of whether the application is filed with the Division by mail or made online, will be considered a separate violation of these rules and grounds for disciplinary action against the licensee.

11/03/04

R162-207-10. Exemption from Continuing Education Requirement.

207.10 A licensee may obtain an exemption from the continuing education requirement of R162-208.1 for a period not to exceed four years upon a finding by the Division that there is reasonable cause to grant the exemption.

11/03/04

207.10.1 Exemptions from the continuing education requirement may be granted for reasons including military service, prolonged absence from Utah for religious or secular service, and extended or serious illness.

11/03/04

207.10.2 A licensee seeking an exemption from the continuing education requirement shall apply to the Division for an exemption. An application for an exemption from the continuing education requirement shall set forth with specificity the reasons why the licensee is unable to complete the continuing education and the reasons why the licensee believes that an exemption would be reasonable.

11/03/04

207.10.3 A licensee may not seek a retroactive exemption by applying for the exemption after the time period for renewal and reinstatement of a license has already passed.

11/03/04

207.10.4 All applications for an exemption shall be considered in an informal proceeding before the Division Director or his designee and shall be based on the information submitted with the application. No hearing will be permitted.

11/03/04

207.10.5 Upon a finding of reasonable cause, the Division shall grant the exemption from the continuing education requirement for a specified period of time, not to exceed four years.

11/03/04

R162-208. Continuing Education.**R162-208-1. Required Hours of Continuing Education.**

208.1 As authorized by Section 61-2c-104(7)(d)(ii)(A), the Utah Residential Mortgage Regulatory Commission has set the number of hours of continuing education required for renewal as follows:

02/03/04

208.1.1 Individuals with renewal dates on or before December 31, 2005 - zero credit hours.

02/03/04

208.1.2 Individuals with renewal dates after December 31, 2005 - fourteen credit hours.

02/03/04

R162-208-2. Proof of Continuing Education Hours.

208.2 Proof of continuing education hours must be in the form required by the Division.

02/03/04

R162-208-3. Credit Hours.

208.3 For the purpose of this rule, a credit hour is defined as 50 minutes of education within a 60 minute time period. A 10 minute break may be taken for every 50 minutes of education.

Education credit will be limited to a maximum of 8 credit hours per day.

02/03/04

R162-208-4. Subject Matter.

208.4 The following subject matter is acceptable for continuing education credit:

02/03/04

208.4.1 Each time the licensee renews, the required 14 credit hours must include a minimum of 2 credit hours of ethics and a minimum of 3 credit hours related to compliance with Federal and State laws governing mortgage lending.

02/03/04

208.4.2 The balance of the credit hours required for renewal may consist of any courses related to residential mortgage principles and practices that, in the opinion of the Commission, would enhance the competency and professionalism of licensees.

08/03/05

208.4.3 The Division will maintain and will make available to any person upon request a list of course topics that have been approved by the Division and the Commission as acceptable for continuing education purposes. The Division shall also post the list of course topics on its website.

08/03/05

R162-208-5. Unacceptable Subject Matter.

208.5 The following topics are not acceptable for continuing education purposes:

02/03/04

208.5.1 Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, report writing, advertising or similar offerings;

02/03/04

208.5.2 Offerings concerning physical well-being or personal development, such as personal motivation, stress management, time management, dress-for-success, or similar offerings;
and

02/03/04

208.5.3 Meetings held in conjunction with the general business of the licensee and the entity for which the licensee conducts residential mortgage business, such as sales meetings, or in-house staff meetings unless the in-house staff meetings consist of training on the subjects set forth in Section 61-2c-104(7)(d)(i).

02/03/04

R162-208-6. Education Committee.

208.6 The Commission will appoint an Education Committee, the purpose of which will be to assist the Division and the Commission in approving continuing education course topics. The Education Committee will make recommendations to the Division and the Commission about whether any particular course topic is sufficiently related to residential mortgage principles and practices, and whether the topic would tend to enhance the competency and professionalism of licensees, to justify placing the topic on the list of course topics that are acceptable for continuing education purposes. The Division and the Commission may accept or reject the Committee's recommendation on any course topic. 08/03/05

208.6.1 Any licensee or any course provider may request that the Education Committee recommend to the Division and the Commission that a specific topic be approved as an acceptable topic for continuing education purposes. The request must be made in writing, addressed to the Education Committee in care of the Division, and must state specific reasons why the requester believes the topic qualifies for continuing education purposes.

208.6.2 If the Education Committee turns down a request to approve a certain topic for continuing education purposes, the party who requested that the topic be approved may petition the Division and the Commission on an individual basis for evaluation and approval of the topic as being acceptable for continuing education purposes. The Petition must be made in writing, addressed to the Division and the Commission in care of the Division, and must state specific reasons why the requester believes that the topic qualifies for continuing education purposes. If the Division and the Commission find that the topic is acceptable for continuing education purposes, the Division shall add the topic to the list maintained by the Division of approved continuing education topics. 08/03/05

R162-208-7. Course Completion Certificate.

208.7 The course provider shall issue a course completion certificate in the form required by the Division to all licensees who successfully complete a course in a topic that is approved for continuing education purposes. The course completion certificate shall indicate the number of credit hours successfully completed by the student and must be signed by the student and the instructor who taught the course. The course completion certificate must include the course title, date of the course, course certificate number, and course certificate expiration date. 11/03/04

R162-208-8. Online Courses.

208.8 Online courses may be accepted by the Division for continuing education purposes if they comply with all of the other provisions of this rule and if: a) the student who successfully completes a course is able to print from the course provider's web site a continuing education certificate to submit to the Division that meets the requirements of Section 208.7 above; and b) the course provider has methods in place to determine whether a student has successfully completed a course and to insure that only those students who have successfully completed a course are able to print a course completion certificate. 11/03/04

R162-208-9. Continuing Education Instructor Certification.

208.9 All instructors of courses to be taught for continuing education purposes must apply for certification from the Division not less than 60 days prior to the anticipated date of the first class that they intend to teach. 11/03/04

208.9.1 Continuing education course instructor applicants shall meet the requirements set forth in Section 210.5 and Section 210.7 of these rules, and shall demonstrate knowledge of the subject matter of the course they intend to teach by submitting proof of the following: 11/03/04

- (a) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course which the applicant intends to instruct; or
- (b) a bachelors or postgraduate degree in the field of real estate, business, law, finance, or other academic area directly related to the course which applicant intends to instruct; or
- (c) any combination of at least three years of full-time experience and college-level education in a field directly related to the course which the applicant intends to instruct.

11/03/04

208.9.2 Instructor applicants shall demonstrate evidence of the ability to communicate the subject matter by the submission of proof of the following: 11/03/04

- (a) a state teaching certificate or showing successful completion of appropriate college courses in the field of education; or
- (b) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or
- (c) evidence, such as instructor evaluation forms or letters of reference, of the ability to teach in schools, seminars, or in an equivalent setting.

11/03/04

208.9.3 Upon approval by the Division, an instructor shall be issued a certification to act as a continuing education instructor. A continuing education instructor certification shall expire twenty-four months after its issuance. An instructor shall apply for renewal of a continuing education instructor certification prior to the expiration of the instructor's current certification, using the form required by the Division. 11/03/04

208.9.3.1 To qualify for renewal of instructor certification, an instructor must provide proof of having taught a minimum of one class in each course for which renewal is sought in the year preceding application for renewal. The term of a renewed instructor certification shall be twenty-four months. 11/03/04

208.9.3.1.1 If the instructor has not taught during the year preceding renewal and wishes to renew certification, written explanation shall be submitted outlining the reason for not instructing the course, including documentation satisfactory to the Division as to the instructor's present level of expertise in the subject matter of the course. *11/03/04*

208.9.4 Reinstatement of Expired Instructor Certification. If the instructor does not submit a properly completed renewal form, the renewal fee, and any required documentation prior to the expiration date of the instructor's current certification, the certification shall expire. When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a non-refundable late fee in addition to completing all of the requirements for a timely renewal. After the thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and completion of 6 classroom hours of education related to residential mortgages or teaching techniques in addition to completing all of the requirements for a timely renewal. After the three month period, an instructor will be required to apply by following the procedure for obtaining original certification. *11/03/04*

R162-208-10. Continuing Education Course Certification.

208.10 Continuing education course providers who provide education courses specifically tailored for, or marketed to, Utah real estate, appraiser, or mortgage licensees are required to apply to the Division for certification of any course for which continuing education credit is promised at least 60 days prior to the anticipated date of the first class. Except as may be provided in Subsection 208.10.5, the Division will not grant continuing education credit to students who have taken courses that have not been certified by the Division in advance of the courses being taught to students. *08/03/05*

208.10.1 Approved continuing education providers may include accredited colleges and universities, public or private vocational schools, national and state mortgage related professional societies and organizations, and proprietary schools and instructors. *08/03/05*

208.10.2 Application procedure. Except as provided in Subsection 208.10.3, education providers shall make application to the Division following the procedures set forth in Subsection 208.10.4. *08/03/05*

208.10.3 A continuing education provider who provides proof to the Division that a course offering has been certified for continuing education credit in a minimum of three other states and that the provider has specific standards in place for development of their courses and approval of instructors, may be granted certification of a course by filling out the form required by the Division and including the following with the application: *08/03/05*

(a) a copy of the provider's standards used for developing curricula and for approving instructors; *08/03/05*

(b) evidence that the course is certified in at least three states: 08/03/05

(c) a sample of the course completion certificate bearing all information required by Subsection 208.10.4(l) and 08/03/05

(d) all required fees, which shall be non-refundable. 08/03/05

208.10.4 Submission of Course for Certification. The application shall include the non-refundable instructor certification fee of \$50.00 and the non-refundable \$70.00 course certification fee per course per instructor. The application shall be made on the form approved by the Division which shall include the following information: 08/03/05

(a) Name, phone number and address of the sponsor of the course, including the owners and the coordinator or director responsible for the offering;

(b) The title of the course offering including a description of the type of training; for example, seminar, conference, correspondence course, or similar offering;

(c) A copy of the course curriculum including a course outline of the comprehensive subject matter. Except for courses approved for specific distance education delivery, the course outline shall include the length of time to be spent on each subject area broken into segments of no more than 30 minutes each, the instructor for each segment, and the teaching technique used in each segment;

(d) A complete description of all materials to be distributed to the participants;

(e) The date, time and locations of each course;

(f) The procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

(g) Except for courses approved for specific distance education delivery, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

(h) An instructor application on a form approved by the Division including the information as defined in R162-9.4;

(i) A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative;

(j) A statement defining how the course will meet the objectives of continuing education by providing education of a current nature and how it will improve a licensee's ability to provide greater protection of, and service to, the public;

(k) A signed statement agreeing not to perform marketing for a specific company or

professional service, or to market personal sales products;

(l) A sample of the completion certificate, or the completion certificate required by the Division, if any, that will be issued which shall bear the following information:

(i) Space for the licensee's name, type of license and license number, date of course;

(ii) The name of the course provider, course title, hours of credit, certification number, and certification expiration date;

(iii) Space for the signature of the course sponsor and a space for the licensee's signature; and

(m) Signature of the course coordinator or director.

11/03/04

208.10.5 Individual licensees may apply to the Division for continuing education credit for a non-certified mortgage course that was not required by these rules to be certified in advance by filling out the form required by the Division and providing all information concerning the course required by the Division. If the licensee is able to demonstrate to the satisfaction of the Division that the course will likely improve the licensee's ability to better protect or serve the public and improve the licensee's professional licensing status, the Division may grant the individual licensee continuing education for the course. *08/03/05*

208.10.5.1 Provided the subject matter of the course is applicable to residential mortgage loan business in Utah, a course approved for continuing education purposes in another state or jurisdiction may be granted Utah continuing education credit on a case by case basis. *08/03/05*

208.10.6 Distance Education. Continuing education courses in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time, may be certified by the Division if the particular distance education method has been approved by the Commission and the Division. Application must be made to the Division on the form required by the Division for certification of courses that do not take place in a traditional classroom setting.

08/03/05

R162-208-11. Conditions of Certification.

208.11.1 Course Completion Certificates. Upon completion of the educational program the course provider shall furnish to each student a certificate of completion in the form required by the Division. *11/03/04*

208.11.1.1 Course completion certificates may be given only to those students who have attended a minimum of 90% of the required class time of a live lecture course. Within 10 days of the end of the course, the course provider shall furnish to the Division a roster of students and their license numbers for whom certificates were issued. *11/03/04*

208.11.2 Registration Records. A course provider shall maintain for three years a record of registration of each individual completing a course and any other information required by the Division regarding the individual's attendance at the course, including exam results, if any.

11/03/04

208.11.3 Course providers shall require that a student registered for a distance education course completes the course within one year of the date the student originally registered for the course.

11/03/04

208.11.4 Material Changes in Courses Certified for Continuing Education Purposes. Whenever there is a material change in a certified continuing education course, including a change in curriculum, course length, instructor, or refund policy, the provider shall promptly notify the Division in writing.

11/03/04

208.11.5 Course Evaluation Forms. At the end of each course, course providers shall require that each student complete a standard evaluation form provided by the Division. The forms shall be collected at the end of the class, sealed in an envelope, and mailed by the course provider to the Division within 10 days of the last class.

11/03/04

R162-208-12. Continuing Education Course Certification and Renewal.

208.12 All course certifications shall expire two years after their issuance.

11/03/04

208.12.1 Application for renewal of a continuing education course certification shall be made on the form required by the Division and shall include the non-refundable renewal fee.

11/03/04

208.12.1.1 If the certification of a continuing education course is not renewed within three months after its expiration date, the course provider will be required to apply for a new certification for the course.

11/03/04

208.12.2 After a course has been renewed three times, the course provider will be required to apply for a new certification.

11/03/04

R162-208-13. Division Evaluation and Monitoring of Courses and Instructors.

208.13.1 The Division shall cause certified continuing education courses to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

11/03/04

208.13.2 On a randomly selected basis, the Division may assign monitors to attend courses for the purpose of evaluating the courses and the instructors. The monitors will complete a standard evaluation form provided by the Division and return the form to the Division within 10 days after the last class.

11/03/04

R162-208-14. Individual Application for Continuing Education Credit.

208.14 A licensee may apply for continuing education credit for any non-certified continuing education course if the licensee believes the course will improve his ability to better protect or serve the public, provided the course was taken from a nationwide education provider. The subject matter of the course may not relate exclusively to the practice of the residential mortgage business in a state other than the State of Utah. 11/03/04

R162-208-15. Limitation on Multiple Use of Credit Hours.

208.15 A mortgage licensee who is also licensed by the Division as a real estate broker, real estate sales agent, or real estate appraiser may not receive credit toward renewal of a mortgage license for continuing education hours that have already been used toward renewal of a real estate broker, real estate sales agent, or real estate appraiser license. 11/03/04

R1 R162-209. Administrative Proceedings.

R162-209-1. Requests for Agency Action.

209.1.1. Any application form which is filled out and submitted to the Division for a license or renewal of a license, or for certification of a school, instructor, or course, shall be deemed a request for agency action pursuant to the Utah Administrative Procedures Act, Section 63-46b-1, et seq. 08/29/06

209.1.2 A complaint against a licensee requesting that the Division commence an investigation or a disciplinary action is not a request for agency action pursuant to the Utah Administrative Procedures Act, Section 63-46b-1, et seq. 08/29/06

209.1.3 Other requests for agency action shall be in writing and signed by the requestor, and shall contain the information required by the Utah Administrative Procedures Act, Section 63-46b-3. 08/29/06

R162-209-2. Formal Adjudicative Proceedings.

Any adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted on a formal basis. 08/29/06

R162-209-3. Informal Adjudicative Proceedings.

209.3.1. All adjudicative proceedings as to any other matters not specifically designated as formal adjudicative proceedings shall be conducted as informal adjudicative proceedings. 04/13/01

209.3.2. A hearing will be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices Act or by these rules. 07/19/02

209.3.3. All proceedings on original or renewal applications for a license will be conducted as informal adjudicative proceedings. 08/29/06

209.3.4. All proceedings on original or renewal applications for certification of a school, instructor, or course will be conducted as informal adjudicative proceedings. 08/29/06

209.3.5. Except as provided in Section 63-46b-20, all proceedings for disciplinary action commenced by the Division following investigation of a complaint will be conducted as informal adjudicative proceedings. 08/29/06

R162-209-4. Hearings Not Required.

A hearing is not required and will not be held in the following informal adjudicative proceedings:

- (a) The issuance of an original or renewed license when the application has been approved by the Division; 04/13/01
04/12/04
- (b) The issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the Division; 11/03/04
- (c) The issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division; 04/13/01
- (d) The denial of an application for original or renewed license on the ground that it is incomplete; 04/12/04
- (e) The denial of an application for original or renewed school certification, instructor certification, or course certification on the ground that it does not comply with the requirements of Sections R162-208.9, R162-210.2, R162-210.5, or R162-210.6; or 11/03/04
- (f) All proceedings on an application for an exemption from the continuing education requirement. 11/03/04

R162-209-5. Hearings Required in Informal Adjudicative Proceedings.

209.5.1 Hearings will be held in all proceedings commenced by the Division for disciplinary action pursuant to U.C.A. Section 61-2c-402. 08/29/06

R162-209-6. Hearings Permitted.

209.6.1. Except as provided in Subsection 209.6.2, an informal post-revocation hearing following the revocation of a license pursuant to Utah Code Section 61-2c-202(4)(d) for the failure of a person to accurately disclose his criminal history will be held if requested in writing by the person within 30 days from the date the Division's order revoking the license was mailed.

209.6.2 Upon a finding of good cause shown for a delay in requesting a hearing, the Director may grant a post-revocation hearing to a licensee whose request for a hearing was not timely made.

08/29/06

08/29/06

R162-209-7. Procedures for Hearing in Informal Adjudicative Proceedings.

209.7.1 The procedures to be followed in all informal adjudicative proceedings are set forth in Title 63, Chapter 46b, Utah Administrative Procedures Act, Utah Administrative Code Section R151-46b, and in these rules.

08/29/06

209.7.2 Except as provided in Subsection 209.8.3 of these rules, a party is not required to file a written answer to a notice of agency action from the Division in an informal adjudicative proceeding.

08/29/06

209.7.3 Assistance of an Administrative Law Judge. In any proceeding under this subsection, the Commission and the Division may, but shall not be required to, delegate a hearing to an Administrative Law Judge or request that an Administrative Law Judge assist the Commission and the Division in conducting the hearing. Any delegation of a hearing to an Administrative Law Judge shall be in writing.

08/29/06

209.7.4. Notice of hearing. Upon the scheduling of a hearing by the Division on an application for a license or upon receipt of a timely request for a hearing where other hearings are permitted, the Division shall mail written notice of date, time, and place scheduled for the hearing at least ten days prior to the hearing.

08/29/06

209.7.5. Discovery. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary and relevant evidence upon written request to the Division. Parties shall have access to information gathered during an investigation by the Division to the extent permitted by Title 63, Chapter 2, Government Records Access and Management Act, and other applicable laws. The Division shall provide the information within 15 days of receipt of the written request. Information that will not be provided by the Division to a party includes the Division's Investigative Report, draft documents, attorney/client communication, materials containing an attorney's work product, materials containing the investigator's thought processes or analysis, or internal Division forms and memoranda. The Division may decline to provide a party with information that it has already provided to that party.

08/29/06

209.7.6. Intervention. Intervention is prohibited.

08/29/06

209.7.7. Hearings. Hearings shall be open to all parties, except that a hearing may be conducted in a closed session which is not open to the public if the presiding officer closes the hearing pursuant to Title 63, Chapter 46b, the Utah Administrative Procedures Act, or Title 52, Chapter 4, the Open and Public Meetings Act.

08/29/06

209.7.8. Representation by Counsel. The respondent in a proceeding commenced by the

Division, or the requestor in a proceeding commenced by a request for agency action, may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues. 08/29/06

209.7.9. Witnesses. A party to a proceeding may request that the Division subpoena witnesses or documents on the party's behalf by making a written request to the Division. The Division will thereafter generate the witness subpoenas and furnish them to the party requesting them. The party who has requested that a witness be subpoenaed shall bear the cost of service of the subpoena upon the witness, the witness fee and mileage to be paid to the witness. 08/29/06

209.7.10. Record. The Division shall cause a record to be made of the hearing by audio or video recorder, or by a certified shorthand reporter. Any party to a proceeding at his own expense, may have a reporter approved by the Division prepare a transcript from the Division's recording of the proceedings. 08/29/06

209.7.11. Orders. Within a reasonable time after the close of a proceeding, the presiding officer shall issue a signed order in writing that states the decision, the reasons for the decision, a notice of any right of administrative or judicial review available to the parties, and the time limits for filing an appeal or requesting review. The order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at the hearing. A copy of the Order shall be promptly mailed or delivered to each of the parties. 08/29/06

R162-209-8. Additional Procedures for Disciplinary Proceedings Commenced by the Division.

209.8.1 The following additional procedures shall apply to disciplinary proceedings commenced by the Division pursuant to U.C.A. Section 61-2c-402 following the investigation of a complaint by the Division: 08/29/06

209.8.2 Notice of Agency Action and Petition. The proceeding shall be commenced by the Division filing and serving a Notice of Agency Action and a Petition setting forth the allegations made by the Division. 08/29/06

209.8.3 Answer. The presiding officer at the time the Petition is filed may, upon a determination of good cause, require a person against whom a disciplinary proceeding has been initiated pursuant to U.C.A. Section 61-2c-402 to file an Answer to the Petition by ordering in the Notice of Agency Action that the respondent shall file an Answer with the Division. All Answers are required to be filed with the Division within thirty days after the mailing date of the Notice of Agency Action and Petition. 08/29/06

209.8.4 Witness and Exhibit Lists. The Division shall provide its Witness and Exhibit Lists to the respondent at the time it mails its Notice of Hearing to the respondent. The respondent shall provide its Witness and Exhibits Lists to the Division no later than thirty days after the mailing date of the Division's Notice of Agency Action and Petition. 08/29/06

209.8.4.1 Contents of Witness List. A Witness List shall contain the name, address, and

telephone number of each witness, and a summary of the testimony expected from the witness. 08/29/06

209.8.4.2 Contents of Exhibit List. An Exhibit List shall contain an identification of each document or other exhibit that the party intends to use at the hearing, and shall be accompanied by copies of the exhibits. 08/29/06

209.8.5. Pre-hearing Motions. Any pre-hearing motion permitted by the Department of Commerce Administrative Procedures Act Rules shall be made in accordance with those rules. The Director of the Division shall receive and rule upon any pre-hearing motions. 08/29/06

R162-210. Certification of Prelicensing Education Providers.

R162-210-1. Definitions.

210.1.1 For the purposes of this rule, "school" includes:

- (a) Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education;
- (b) Any community college, vocational-technical school, state or federal agency or commission;
- (c) Any nationally recognized mortgage organization, any Utah mortgage organization, or any local mortgage organization which has been approved by the Utah Residential Mortgage Regulatory Commission; and
- d) Any proprietary mortgage education school 11/03/04

210.1.2 For the purposes of this rule, "applicant" shall include school directors, school owners and pending instructors. 11/03/04

210.1.3 "Distance Education" is defined as education in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time. 11/03/04

R162-210-2. Application for School Certification.

210.2.1 A school offering prelicensing education must be certified by the Division of Real Estate before providing any education. Each school requesting approval of an educational program designed to meet the prelicensing education requirements must make application for approval on the form prescribed by the Division. The application must include the non-refundable application fee and the following information which will be used in determining the school's eligibility for approval:

- (a) Name, phone number and address of the school, school director, and all owners of the

school;

(b) A description of the type of school and a description of the school's physical facilities. All courses must be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home-study purposes;

(c) A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of classroom time. The curriculum must include all of the topics set forth in the Standard Curriculum approved by the Utah Residential Mortgage Regulatory Commission and the Division. A school may alter the sequence of presentation of the required topics, and may add topics in addition to those required by the Standard Curriculum;

(d) A list of each certified instructor the school intends to use and the instructor certification number which has been issued by the Division. A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division the academic training or experience qualifying him to teach the course;

(e) An itemization of methods of instruction, including lecture method, slide presentation, cassette, videotape, movie, or other method;

(f) A list of the titles, authors and publishers of all required textbooks. All texts, workbooks, supplement pamphlets and any other materials must be appropriate and current in their application to the required course outline;

(g) A schedule of the days, times and locations of classes;

(h) A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; the school's evidence of notification to candidates of the qualifying questionnaire; and the school's refund policy. The statement to the student shall state in capital letters no smaller than 1/4 inch the following language: "Any student attending the (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school;" and

(i) Any other information as the Division may require.

11/03/04

R162-210-3. School Certification and Renewal.

210.3.1 When a school has met all conditions of certification, and upon approval by the Division, a school will be issued certification. A school certification will expire 24 months

from the date of issuance. A school shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division. 11/03/04

R162-210-4. Rules of Conduct for Certified Schools.

210.4.1 A school shall teach the approved course of study as outlined in the Standard Course Outline approved by the Utah Residential Mortgage Regulatory Commission. 11/03/04

210.4.2 A school shall require each student to attend the required number of hours. 11/03/04

210.4.3 A school shall maintain a record of each student's attendance for a minimum of five years after enrollment. 11/03/04

210.4.4 A school shall not accept a student for a number of hours that is less than the full prelicensing curriculum without first having a written statement from the Division indicating the exact number of hours that an applicant for licensure by reciprocity is required by the Division to complete. 11/03/04

210.4.5 A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made in its advertising. School advertising and public notices shall not denigrate the mortgage profession and shall not make disparaging remarks about a competitor's services or methods of operation. 11/03/04

210.4.6 Guest Lecturers. No more than 20% of the required prelicensing education hours may be provided by guest lecturers. Guest lecturers shall be experts in the field on which they provide instruction. Prior to using any guest lecturer, a certified school shall provide to the Division the name of the guest lecturer and a resume which defines the knowledge and expertise of the guest lecturer, or other evidence of professional qualifications of the guest lecturer. 11/03/04

210.4.7 Minimum class time. A school shall not give a student credit for more credit hours of education than the student has actually completed. A credit hour is defined as 50 minutes of instruction within a 60 minute time period. A 10 minute break will be given for each 50 minutes of instruction. 11/03/04

210.4.8 Maximum class hours per day. Education credit will be limited to a maximum of eight credit hours per day. 11/03/04

210.4.9 Limitation on Non-lecture Methods of Instruction. Absent special approval from the Division: (a) Non-lecture methods of instruction will be limited to 50% of the total credit hours of the prelicensing curriculum; (b) Non-lecture methods of instruction will have an accompanying workbook for the student to complete during the instruction. The schools shall submit copies of the workbooks to the Division prior to using a non-lecture method of instruction; and (c) A school must have a certified instructor available to answer student questions within 48 hours after a non-lecture method of instruction has been used. 11/03/04

210.4.10 Proof of Course Integrity for Distance Education Courses. Distance education courses will be reviewed on a case by case basis and will be approved only if, in the opinion of the Division, assurance of the following can be provided: a) There is a method to insure that the person actually completing the course is the student who is to receive credit for the course; b) The course provides no fewer hours of actual instruction than the number of credit hours that will be granted for the course; and c) There is a method to insure that the student comprehends the material. *11/03/04*

210.4.11 Challenge by Examination. A student cannot challenge a course or any part of a course of study by examination in lieu of attendance at the course. *11/03/04*

210.4.12 College Credit Hour Equivalents. A college or a university that provides Division-approved prelicensing education courses may schedule those courses within its regular quarter or semester schedule. A college quarter hour credit is the equivalent of 10 classroom hours of prelicensing education, and a college semester hour credit is the equivalent of 15 classroom hours of prelicensing education. *11/03/04*

210.4.13 Within 15 calendar days after the occurrence of any material change in the information provided in the school's application for certification, the school shall give the Division written notice of that change. *11/03/04*

210.4.14 A school shall not attempt by any means to obtain or to use in its educational offerings the questions from the prelicensing examination unless the questions have been dropped from the current bank of exam questions. *11/03/04*

210.4.15 A school shall not give any valuable consideration to an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to the school, nor shall a school accept valuable consideration from an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to a licensed mortgage entity. *11/03/04*

210.4.16 Licensed mortgage entities may be permitted by a school to solicit prospective mortgage officers at the school, provided that no solicitation may be made during the class time or the 10-minute breaks that are permitted during every hour of instruction. Such solicitation may be made only after the regularly scheduled class time has concluded. No student may be required to attend any such solicitation. *11/03/04*

210.4.17 A school shall use only certified instructors or guest lecturers. The school shall notify the Division about which class sessions the guest lecturers will teach. *11/03/04*

210.4.18 A school's owners and directors shall be responsible for the quality of instruction in the school and for adherence to the state laws and regulations regarding school and instructor certification. *11/03/04*

210.4.19 School directors shall provide the instructor for each course with the required content outline for the course and shall assure that the required subject matter has been taught. *11/03/04*

210.4.20 Disclosure Requirements Regarding Criminal History. For the purposes of this rule, criminal history is defined as any felony or misdemeanor convictions, any pleas in abeyance or diversion agreements, or any pending criminal charges. *11/03/04*

210.4.20.1 Prior to accepting payment from a prospective student for a pre-licensing education course, a certified school shall provide a written disclosure to the prospective student stating that: a) a student with a criminal history may not qualify for a license; b) an applicant with a criminal history may be required to appear at a hearing before the Utah Residential Mortgage Regulatory Commission and the Director of the Division of Real Estate to obtain approval to license in light of the criminal history, and there is no guarantee that such an applicant will be approved; and c) all applicants for licensure will be required to submit to the Division with their applications fingerprint cards that will be used in criminal background checks. *11/03/04*

210.4.20.2 The school shall be required to obtain the student's signature on the written disclosure required by Section 210.4.20.1 acknowledging receipt of the disclosure. The disclosure form and acknowledgement shall be retained in the school's records and made available for inspection by the Division for a minimum of two years following the date upon which the student completes the pre-licensing course. *11/03/04*

R162-210-5. Instructor Application for Certification.

210.5.1 An instructor shall not teach a prelicensing course by himself without having been certified by the Division prior to teaching the course. Each applicant for certification as a prelicensing instructor shall make application for approval on the form required by the Division. *11/03/04*

210.5.2 The applicant for instructor certification to teach Mortgage Officer prelicensing courses shall provide:

- (a) Evidence of a minimum educational level of graduation from high school or its equivalent;
- (b) Evidence of a minimum of five years of experience in the residential mortgage industry within the past ten years, or evidence of having completed appropriate college-level courses specific to the topic proposed to be taught;
- (c) Evidence of a minimum of twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at Instructor Development Workshops totaling at least two days in length; and

(d) Evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught. *11/03/04*

210.5.3 Lending Manager Prelicensing Courses. In addition to the requirements of Section 210.5.2, an applicant for certification to teach the following specific Lending Manager prelicensing courses shall have experience as follows: *11/03/04*

210.5.3.1 Management of a Residential Mortgage Loan Office. An applicant for certification to teach office management courses must have at least two years practical experience in managing an office that engaged in the business of residential mortgage loans. *11/03/04*

210.5.3.2 Mortgage Lending Law. An applicant to teach mortgage lending law courses must be a current member of the Utah Bar Association or have graduated from an American Bar Association accredited law school, and must have at least two years practical experience in the field of real estate law. *11/03/04*

210.5.3.3 Advanced Appraisal. An applicant to teach advanced appraisal courses must be a State-Certified appraiser and must hold an MAI designation or equivalent designation. The instructor applicant must have at least two years practical experience in appraising. *11/03/04*

210.5.3.4 Advanced Finance. An applicant to teach advanced finance courses must have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance. *11/03/04*

210.5.4 Special Circumstances. Instructor applicants who cannot meet the requirements of Section 210.5.2, but who believe they are qualified to be certified as instructors, may petition the Utah Residential Mortgage Regulatory Commission on an individual basis for evaluation and approval of their qualifications as being substantially equivalent to those required for instructor certification. *11/03/04*

R162-210-6. Instructor Certification and Renewal.

210.6.1. Upon approval by the Division, an instructor applicant will be issued a certification that expires twenty-four months following certification. An instructor shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division. *11/03/04*

210.6.2. As a condition of renewal of certification, the applicant shall include the following with the application for renewal:

(a) Proof of having taught at least 20 hours of in-class instruction in a certified mortgage education course during the preceding two years;

(b) Proof of attendance at an instructor development workshop sponsored by the Division during the preceding two years; and

(c) Proof of successful completion of 12 hours of live education courses taken in real estate financing related subjects; 11/03/04

210.6.3 A renewed certification will be issued for two full calendar years, expiring on December 31 of the second calendar year. 11/03/04

210.6.4 If an application for renewal of instructor certification, including all required fees and documentation, is not received prior to the expiration date of the current instructor certification, the instructor certification shall expire. 11/03/04

210.6.4.1 When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date of the certification upon payment of a non-refundable late fee in addition to completion of the requirements for a timely renewal.

11/03/04

210.6.4.2 After the thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and completion of 6 classroom hours of education related to residential mortgages or teaching techniques in addition to completing all of the requirements for a timely renewal. After the three month period, an instructor will be required to apply as for an original certification.

11/03/04

R162-210-7. Determining Fitness for Certification.

210.7.1 In order to qualify for school certification, all school directors and all owners of the school must meet the criteria of honesty, integrity, truthfulness, reputation, and competency. In order to qualify for instructor certification, all instructors must meet the criteria of good moral character, honesty, integrity, truthfulness, reputation, and competency. 11/03/04

210.7.2 The determination of whether a person possesses these qualifications will be made by the Division, with the concurrence of the Commission. In determining fitness for certification, the Division and Commission may consider various factors, including:

(a) whether the person has had a license to practice in the mortgage profession, or any other regulated profession or occupation denied, restricted, suspended, or revoked or subjected to any other disciplinary action by this or another jurisdiction;

(b) whether the person has been permitted to resign or surrender a mortgage license or any other professional license or has ever allowed a license to expire while the applicant was under investigation, or while action was pending against the applicant by a mortgage licensing or any other regulatory agency;

(c) whether any action is pending against the person by any mortgage licensing or other regulatory agency;

(d) whether the person is currently under investigation for, or charged with, or has ever been convicted of or pled guilty or no contest to, or entered a plea in abeyance to, a misdemeanor or felony;

(e) the circumstances that led to any criminal convictions;

(f) the amount of time that has passed since the individual's last criminal conviction;

(g) whether the person has ever been placed on probation or ordered to pay a fine or restitution in connection with any criminal offense or a licensing action;

(h) whether a civil judgment has ever been entered against the person based on fraud, misrepresentation or deceit, and, if the judgment awarded damages against the person, whether the judgment has been fully satisfied;

(i) whether any restitution ordered by a court in a criminal conviction has been fully satisfied;

(j) whether the probation in a criminal conviction or a licensing action has been completed and fully served;

(k) whether there has been subsequent good conduct on the part of the person;

(l) any character testimony presented at the hearing and any character references submitted by the individual;

(m) past acts related to honesty or moral character involving the business of residential mortgage loans;

(n) whether the individual has been guilty of dishonest conduct in the five years preceeding application that would have been ground under Utah law for revocation or suspension of a certification had the individual then been certified;

(o) whether any tax and child support arrearages have been paid; and

(p) whether the individual has demonstrated competency in business subsequent to any part incompetence by the individual in the mortgage loan business. 11/03/04

R162-210-8. Division Evaluation and Monitoring of Courses and Instructors.

210.8.1 The Division shall cause certified prelicensing education courses to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor. 11/03/04

210.8.2 On a randomly selected basis, the Division may assign monitors to attend courses for the purpose of evaluating the courses and the instructors. The monitors will complete a standard evaluation form provided by the Division and return the form to the Division within 10 days after the last class.

11/03/04